IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 406 OF 2003

Mrs. Prisca Cardozo alias
Prisca Cardoz Barreto,
wife of late Alarico
Carlos Vespaciano Barreto,
aged 71 years, landlady,
r/o H. No.1941, Cursabhatt,
Cavorim, Chandor, Goa,
represented herein by her
duly constituted Power of
Attorney Shri Bevin Lourenco
Martins, major in age, r/o
Comba, Margao, Goa. ...Petitioner.

Versus

1. Mr. Cirilo Antonio
Mendes, son of late Inacio
Santano Mendes, aged 61
years, business, r/o H.No.
1938, Cursabhatt, Cavorim,
Chandor, Goa,

2. The Government of Goa,
through its Chief Secretary,
Secretariat, Panaji, Goa, and

3. The Sub-Registrar of Salcete,
Municipal Building,
Margao, Goa. ...Respondents.

Shri N.N. Sardessai, advocate for the petitioner.

Shri C. A.Ferreira, advocate for respondent no.1.

Shri S. R.Rivonkar, Govt. Advocate for respondent nos.2 & 3.

CORAM : A. M. KHANWILKAR, J.

DATE : 11th December, 2003.

ORAL JUGMENT

Rule. Rule made returnable forthwith. Shri Ferreira, learned counsel waives service of notice on behalf of respondent no.1. Shri Rivonkar, learned Government Advocate waives service of notice on behalf of respondent nos.2 and 3. As a short question is involved this petition

is taken up for final hearing forthwith by consent.

2. This Writ Petition under Article 227 of the Constitution of India, takes exception to the Judgment and Order passed by the learned Civil Judge, Senior Division, Margao, dated March 20, 2003, in Regular Civil Suit No.82/2000/A. It is not necessary to burden the judgment with the events which led to the filing of the suit. Suffice it to mention that the question involved in the present Writ Petition is whether the Court below was right in rejecting the request for adjournment essentially on the ground that the Court had no jurisdiction to grant more than three adjournments in the matter in view of the amended provisions of the Civil Procedure Code. That request for adjournment was made on behalf of the petitioner/plaintiff on 16th January, 2003, which was rejected. Application was moved on behalf of the plaintiff for re-opening the evidence. The Court below by the impugned Judgment and Order has, however, declined to consider the request of the plaintiff, which order is the subject-matter of challenge in the present petition.

3. The first question that arises is whether the view taken by the trial Court that the Court had no jurisdiction to grant more than three adjournments can be sustained. Indeed the Court below has relied on the unreported decision of this Court in Writ petition No.298 of

2002 decided on 17th October, 2002. However, this Court in a subsequent decision in Writ Petition No.294 of 2003 decided as recently as 7th August, 2003, on analysing all the relevant decisions has taken the view that the provisions contained in Order XVII of the Code of Civil Procedure, will have to be construed as discretionary power to the Court. In other words, this Court has already held in Writ Petition No. 294 of 2003 that the Court has discretion to grant adjournment in appropriate case, provided sufficient cause is made out.

4. In the circumstances, the next question is whether sufficient cause for adjournment was made out. The petitioner has relied on a medical certificate pointing out that she was undergoing treatment for general debility, anxiety, neurosis and low blood pressure. That certificate has been issued by Dr. Max de Loyola Furtado dated 9th January, 2003. It cannot be overlooked that the petitioner is already 70 years and above and with her growing age and the ailment it is possible to hold that on 16th January, 2003, she was not able to attend the Court. That is sufficient cause. The question, however, is whether the advocate who was appearing for the petitioner had any justification for not appearing on 16th January, 2003. On that, as per the pleadings filed, the junior advocate requested for adjournment. There is no reason to doubt the statement made on affidavit in this behalf. In the

circumstances, there was sufficient cause for not appearing on 16th January, 2003.

5. Taking an over all view of the matter and the interests of justice, I think it proper to set aside the view taken by the court below and instead accept the request made on behalf of the petitioner for re-opening of the case moved under Order IX Rule 9 of the Civil Procedure Code, on condition that the petitioner shall pay costs to the respondent no.1 quantified at Rs.2,500/- (rupees two thousand five hundred only) and to respondent nos. 2 and 3 together being the sum of Rs.2,500/- (rupees two thousand five hundred only). Costs be paid within two weeks from today. The trial Court may proceed with the trial on its own merits in accordance with law. All other questions are kept open.

6. Petition disposed of accordingly.

A. M. KHANWILKAR, J.

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